IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1538 of 1980

with

FIRST APPEAL No 82 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

MR VC DESAI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 17/02/2001

ORAL(COMMON)JUDGEMENT

In both these appeals, judgment and decree dated 30.4.1980 passed by the Joint Civil Judge (SD), Nadiad in Spl.C.S.No.64/74 has been challenged. At the request of the learned advocates, both these appeals are heard together and decided by this common judgment.

2. Learned Advocate Shri V.C.Desai has appeared for the original plaintiff, whereas Ld.Asst.Govt.Pleader Shri M.A.Bukhari has appeared for original defendants Nos 1 to 3, whereas though served nobody has appeared for original defendant No.4. For the sake of convenience, the parties to the litigation have been referred to as they were arrayed before the trial court.

3. The plaintiff filed the suit against the defendants for a declaration that defendant No.2 had no right to enter his land admeasuring 2 acres forming part of S.No.180/1 situated at village Fouji, Taluka Kapadwanj, Dist.Kheda. The plaintiff also prayed for a declaration that notices issued by defendant No.2 to the plaintiff dated 20.9.1973 and 2.11.1973 alleging that the plaintiff had made an encroachment on the Government land were illegal and bad in law. The plaintiff also prayed that by way of damages a sum of Rs.40,000/- should be awarded to the plaintiff because (i) the compound wall of the plaintiff had been damaged to the tune of Rs.18,000/-,(iie dfeendant No.2 and his officers had caused damage to the garden and plants of the plaintiff to the tune of Rs.10,000/-, and (iii) due to the harassment caused to the plaintiff a sum of Rs. 12,000/was claimed as compensation as the plaintiff had undergone mental agony.

4. The case of the plaintiff before the Trial Court was that the land admeasuring 2 acres was granted to him by the Collector, Kheda and possession of the land in question was given to the plaintiff on 12.9.1968 and towards consideration, a sum of Rs.4,840/- was given by the plaintiff to defendant No.1-State. The land as shown in Exh.102 was allotted to the plaintiff. Exh.103 is an original map showing the land allotted to the plaintiff,

but subsequently, there was some change in the grant of the land and ultimately the land as shown in Exh. 102 map was granted to the plaintiff. According to the plaintiff, defendant No.2-Mamalatdar had no right to enter the land belonging to the plaintiff and had no right to demolish the compound wall constructed by the plaintiff. As per the plaintiff's case, defendant No.2-Mamalatdar had issued notices giving intimation to the plaintiff that the plaintiff had made an encroachment on the Government land. As per the case of the plaintiff, the land which was referred to in their notices had been allotted to the plaintiff by the Collector, Kheda. The land in question originally belonged to the Forest Department of the State of Gujarat but subsequently it was transferred by the Forest Department to the Revenue Department and thereafter the Collector, Kheda had granted the land in question to the plaintiff.

5. The written statement was filed by the defendants (Exh.26) contending that the land which was the subject matter of the notices had not been granted to the plaintiff and, in fact, the plaintiff had made an encroachment to the extent of 5 gunthas on the land belonging to the Government and had consructed compound wall on the Government land by making an encroachment. The averments with regard to the damage caused to the plaintiff were denied in the written statement and it was prayed that the suit be dismissed.

6. After considering the pleadings, the Trial Court had raised issues at Exh.30, which are as follows:

(1) Whether defendant proved that plaintiff has encroached on A.0.5 gunthas of land over and above A.2.0 given to him by Collector's order No.LND 5157 dtd.1.8.68 from S.No.180/1? If yes,

(2) Whether defendant proved that they were authorised in law to remove encroachment legally and by the process of law?

(3) Whether the defendants are entitled to costs of removal of encroachment from the plaintiff?

(4) Whether this Court has no jurisdiction to hear this suit vide para 12 of w.s.?

(5) Whether suit notice is legal and valid?

(6) Whether plaintiff proved that defendants have caused damages worth Rs.20,000.00 or any amount by removal of wall?

(7) Whether plaintiff proved that defendants removed trees etc worth Rs.10,000.00 or any amount of plaintiff?

(8) If yes, whether defendants are liable to pay Rs.10,000.00 or any amount for these damages?

(9) Whether plaintiff proved that he is entitled to Rs.10,000.00 or any amount as damages for mental agony, loss of prestige and status in society by act of defendants?

(10) Whether plaintiff is entitled to relief of injunction as prayed for in plaint para 12(a)?

(11) What orders and decree?

The findings on the above issues are as follows:

(1) to (4), (6) to (8) negative
(5) and (10) affirmative
(9) He is entitled to Rs.2,000.00 only
(11) As per order at the end.

7. After considering the pleadings and evidence, the suit against defendant No.4 had been dismissed, but it was directed that a sum of Rs.2,000/- should be paid by defendants Nos 1, 2 & 3 by way of damages for causing mental agony to the plaintiff. The claim for remaining amount of Rs.38,000/- had failed and so far as the said amount is concerned, the suit was dismissed. Defendants Nos. 1, 2 & 3 were permanently restrained from entering into the suit land and they were also directed not to disturb the the plaintiff's possession of the suit land. Notices given to the plaintiff alleging that he had made an encroachment on government land had been declared to be illegal and it was held that the suit land belonged to the plaintiff.

8. Being aggrieved by the judgment and decree, the plaintiff has filed First Appeal No.1538/80 whereas defendants Nos. 1, 2 & 3 have filed First Appeal No.82/81 before this court.

9. Before coming to conclusion, the trial court had examined evidence of plaintiff Shri Ajaykumar Dwarkadas (Exh.129), Bhanuprasad(Exh.146) who had constructed the wall which was alleged to have been demolished by defendant No.2 or his agent and Shri Chandubhai Ranchhodbhai Patel (Exh.155), a photographer. On behalf of the Government authorities, Govindbhai Rajaram Karnik, Deputy Conservator of Forest, Baroda Division, Baroda (Exh.90), Kantibhai Purshottamdas, Surveyor in the Forest Department (Exh.94), Harmanbhai Chhaganbhai, Circle Inspector (Exh.101), Jaydevlal Chhotalal Barot, who was Mamalatdar of Kapadwanj Taluka at the relevant time (Exh.115), Kubersing Somabhai Dabhi, Revenue Circle Inspector (Exh.119) and Shri Nagjibhai Saluji Bara, an employee of the Forest Department(Exh.125) had been examined. Two maps giving details with regard to the suit land being Exhs 102 and 103 were also looked into by the trial court.

10. The learned advocates have challenged the validity of the judgment and decree passed by the trial court. Ld.Advocate Shri V.C.Desai appearing for the plaintiff has submitted that the trial court was in error while dismissing the claim of the plaintiff to the extent of Rs.38,000/-. It has been submitted by him that, in fact, the compound wall belonging to the plaintiff had been damaged and yet no compensation was awarded. Moreover, he has submitted that Rs.2,000/- awarded to the plaintiff by way of compensation for mental agony undergone by the plaintiff is too meagre an amount as the plaintiff had undergone mental agony and was put to difficulties and stress while litigating against the defendants. A sum of Rs.12,000/-, which was claimed towards mental agony ought to have been awarded by the trial court. It has also been submitted by him that nothing was awarded by way of damages in respect of damage caused to the wall belonging to the plaintiff and towards loss caused to the plaintiff on account of damage caused to the garden by removal of plants and shrubs, which were on the land belonging to the plaintiff.

11. On the other hand, Learned Asst.Govt.Pleader Mr.M.A.Bukhari has submitted that the land in question, in fact, belonged to the Government and the plaintiff had made an encroachment on the Government land. Therefore, the concerned defendants should not have been prevented from taking action against the plaintiff for removal of the encroachment made by the plaintiff on the Government land. According to him, even a sum of Rs.2,000/- ought not to have been awarded to the plaintiff towards

so-called mental agony undergone by the plaintiff.

12. I have heard the learned advocates and have also perused the evidence adduced before the trial court. Upon perusal of evidence and after hearing the learned advocates, it is clear that the judgment rendered by the trial court is just and proper, and I do not see any illegality committed by the trial court in appreciation of the evidence and, therefore, both these appeals should fail.

13. So far as the allegation with regard to the encroachment against the plaintiff is concerned, upon perusal of the evidence adduced by Shri Harmanbhai Chhaganbhai (Exh.101) and upon perusal of Exhs.102 and 103, the maps giving details with regard to allotment of the land in question, it is very clear that the plaintiff had not made any encroachment on the Government land. Upon perusal of evidence, it is clear that the Collector, Kheda granted 2 acres of land to the plaintiff and the possession of the land was given to the plaintiff. At the time of giving possession of land, a sketch or a map giving details with regard to the extent of land given to the plaintiff had been prepared. The said map is at Exh.103. Upon perusing the evidence adduced by Shri Harmanbhai Chhaganbhai (Exh.101) and other evidence, it is clear that the shape of the plot of land which was initially given to the plaintiff was not regular. In the circumstances, some change was made in the actual grant of the land so as to give a plot of a regular size to the plaintiff. After making necessary changes, the land as shown in a map (Exh.102) was allotted to the plaintiff. The possession of the land was handed over to the plaintiff in the presence of Circle Inspector Shri Harmanbhai Patel. Thus, it is not in dispute that the land admeasuring 2 acres forming part of S. No. 180/81 was granted to the plaintiff. It was also not the case of the concerned defendants that the plaintiff was in possession of more land than the land which was granted to the plaintiff as shown in map-Exh.102. Possibly, the misunderstanding arose on account of the change made in the allotment of the land. As stated hereinabove, as the plot which was to be granted to the plaintiff was not of a regular shape, some change was made and on account of the said change, boundaries of the land proposed to be allotted to the plaintiff and actually granted to the plaintiff were different. After making the change, the area of the land which was allotted to the plaintiff, remained the same, i.e. 2 acres. Thus, upon perusal of the evidence, it is clear that the plaintiff had not made any encroachment and, therefore, the impugned notices

which were issued by defendant No.2 Mamalatdar were illegal. In the circumstances, the trial court was absolutely justified in granting permanent injunction in favour of the plaintiff so that the concerned defendants may not disturb the peaceful possession of the plaintiff in respect of the land in question.

14. So far as the question with regard to compensation towards damage to the compound wall is concerned, the trial court did not award any amount by way of compensation to the plaintiff. The plaintiff had not led any satisfactory evidence with regard to the amount spent by him for the purpose of construction of the compound wall. Contractor Shri Bhanuprasad (Exh.146) was examined by the plaintiff. Receipts being Exhs 138 and 139 were relied upon by the contractor to show that he had done the work with regard to the construction of the compound wall and had charged money from the plaintiff. It is pertinent to note that in the cross-examination, Shri Bhanuprasad had admitted the fact that he had not maintained any account at the time when he had constructed the wall in question. He could not give satisfactory answers to simple questions with regard to the persons from whom he had purchased the material like bricks, pipes etc. Upon appreciation of evidence of Shri Bhanuprasad, the trial court rightly came to the conclusion that either he had not constructed the compound wall in question or he was not telling the truth with regard to the amount received by him from the plaintiff. Upon appreciation of the said evidence and looking to the fact that no other evidence was adduced by the plaintiff to show the extent of expenditure incurred by the plaintiff towards construction of the compound wall, the trial court rightly did not award any amount by way of damages for the alleged demolition of the compound wall.

15. So far as the loss caused to the plants, shrubs etc belonging to the plaintiff to the extent of Rs.10,000/- is concerned, the plaintiff did not adduce any evidence and he did not give details with regard to the plants and shrubs which had been damaged. He did not adduce any evidence to give details about the expenditure incurred by him for the purpose of procurement and development of the plants. In the absence of any evidence, in my opinion, one cannot find any fault with the trial court for not awarding any compensation in respect of the alleged loss caused to the garden, plants and shrubs belonging to the plaintiff.

16. So far as the award to the extent of Rs.2,000/for

undergoing mental agony is concerned, the trial court had awarded the said amount by way of compensation for the reason that though the plaintiff had not made any encroachment on any Government land, defendant No.2 Mamalardar had issued illegal notices to the plaintiff calling upon him to handover possession of his own land. Thus, though no encroachment was made by the plaintiff, he was treated as an encroacher and he had to litigate to establish the fact that he had not made any encroachment and ultimately he successfully proved that he had not made any encroachment on any governemnt land. One can very well presume that when a person has to litigate, he has to not only incur expenditure in the case towards lawyer's fees, conveyance charges etc but has also to undergo stress and tension which not only affects his day to day life but also his mental health. Looking to the said fact, the trial court awarded a nominal sum of Rs.2,000/to the plaintiff. Submission of Ld. AGP Shri Bhukari that award of Rs.2,000/- to the plaintiff by way of compensation due to stress and mental agony is on the higher side is not proper. In my opinion, the amount awarded is very modest.

17. Thus, upon going through the pleadings and evidence, it is very clear that the trial court was absolutely justified in granting injunction as prayed for against defendant Nos. 1,2 and 3 and also in awarding a sum of Rs.2,000/- by way of damages or compensation to the plaintiff. In my opinion, the trial court has not committed any error and has appreciated the evidence in an absolutely proper manner. As no illegality has been committed by the trial court, both these appeals are dismissed with no order as to costs.

17.2.2001 (A.R.DAVE, J.)